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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 641

HELENE P. PIERRE as a citizen of the United States and of the State of California on her own behalf and on behalf of all other citizens, electors and voters, and riparian property owners and taxpayers of the State of California situated and located in the Proposed Los Angeles County Waterworks District #37 — Acton, California,

Petitioners,

vs.

FRANK M. JORDAN, in his official capacity as Secretary of State of California; EDMUND G. BROWN, in his official capacity as Governor of the State of California; BENJAMIN S. HITE, in his official capacity as Registrar of Voters of the County of Los Angeles, State of California; STANLEY MOSK, in his official capacity as Attorney General of the State of California; WARREN M. DORN, Chairman of the Board of Supervisors of Los Angeles County; FRANK G. BONELLI, Member of Board of Supervisors of Los Angeles County; KENNETH HAHN, Member of Board of Supervisors of Los Angeles County; ERNEST E. DEBS, Member of Board of Supervisors of Los Angeles County; BURTON W. CHACE, Member of Board of Supervisors of Los Angeles County; GORDON T. NESVIG, Clerk of Board of Supervisors of Los Angeles County; JOHN A. LAMBIE, Los Angeles County Engineer; JAMES T. ROSTRON, Division Engineer of Los Angeles County Waterworks & Utilities; KENNETH R. PUTNAM, Supervising Civil Engineer, Division Los Angeles County Waterworks & Utilities; PHILIP E. WATSON, Tax Assessor of the County of Los Angeles; and HAROLD J. OSTLY, Tax Collector of the County of Los Angeles,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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TOPICAL INDEX

SUBJECT MATTER	Page
Citations to opinions below	2
Jurisdiction	2
Questions presented	3
Question I	3
Question II	3
Question III	4
Constitutional provisions, statutes, and rules involved	5
Statement	5
Summary of reasons for granting the writ	11
Reason I	12
Reason II	14
Reason III	15
Reason IV	15
Reason V	16
Reason VI	18
Reason VII	19
Reason VIII	20
Reason IX	20
Conclusion	21

APPENDICES

APPENDIX A

Constitutional provisions:

Amendment IV ..... App. p. 1

Amendment XIV ..... App. p. 1

Page

Statutes:

28 U.S.C. Sec. 1254(1) ..... App. p. 1

28 U.S.C. Sec. 1291 ..... App. p. 1

28 U.S.C. Sec. 1331(a) ..... App. p. 2

28 U.S.C. Sec. 1343(3) ..... App. p. 2

28 U.S.C. Sec. 2201-2202 ..... App. p. 2

28 U.S.C. Sec. 2281 ..... App. p. 3

28 U.S.C. Sec. 2284 ..... App. p. 3

42 U.S.C. Sec. 1983 ..... App. p. 4

42 U.S.C. Sec. 1988 ..... App. p. 4

Rules:

Rules of United States Supreme Court — Rule No. 19 ..... App. p. 4

APPENDIX B

District Court Order on Plaintiffs' Motion for Restraining Order ..... App. p. 6

District Court Order on Defendants' Motion to Dismiss ..... App. p. 7

District Court Order on Plaintiffs' Motion to Vacate and Set Aside Order of Dismissal ..... App. p. 8

District Court Order on Plaintiffs' Motion for Default Judgment ..... App. p. 9

United States Court of Appeals for the Ninth Circuit — Decision 333 F2d 951 ..... App. p. 10

United States Court of Appeals for the Ninth Circuit — Denial of Appellants' Petition for Rehearing ..... App. p. 25

AUTHORITIES CITED

CASES — Page

Allegheny County v. Frank Mashuda Co. (1959) 360 U.S. 185 19

Covey v. Town of Somers, 351 U.S. 141 ..... 17, 19

England et al., v. Louisiana State Board of Medical Examiners, et al. (January 13, 1964) 84 S.Ct. 461 20

Loan Association v. Topeka — 20 Wallace 655; 22 Lawyers' Ed. 455 20

Mullane v. Central Hanover Trust Co., (1950) 339 U.S. 306 ..... 17, 19

Schroeder v. City of New York (Dec. 17, 1962) 371 U.S. 208 ..... 7, 17, 19

Walker v. Hutchinson (Dec. 10, 1956) 352 U.S. 112 ..... 17, 19

CONSTITUTIONAL PROVISIONS

Amendment IV 5, 6, 12, 16

Amendment XIV 3, 5, 6, 7, 10, 12, 14, 15, 17, 18, 19, 20

STATUTES

28 U.S.C. Sec. 1254(1) 2, 5

28 U.S.C. Sec. 1291 ..... 2, 5

28 U.S.C. Sec. 1331(a) 5, 6

28 U.S.C. Sec. 1343(3) 5, 6, 15

28 U.S.C. Secs. 2201-2202 ..... 5, 6

28 U.S.C. Sec. 2281 ..... 5, 6

28 U.S.C. Sec. 2284 ..... 5, 6

42 U.S.C. Sec. 1983 ..... 5, 6, 15

42 U.S.C. Sec. 1988 ..... 5, 6

RULES

Rules of United States Supreme Court — Rule 19 ..... 2, 5

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Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Helene P. Pierre, on her own behalf and on behalf of all the other petitioners in this class action, prays that a writ of certiorari issue to review the judgment of the

United States Court of Appeals for the Ninth Circuit entered in the above case. Decision rendered June 9, 1964. Petition for Rehearing denied August 5, 1964.

Citations to Opinions Below

The opinions of the District Court printed in Appendix B hereto, *infra*, pages 6 to 9, inclusive, are unreported; but are to be found in the Record at pages 87, 195, 197, and 199. The opinion of the Court of Appeals printed in Appendix B hereto, *infra*, pages 10 to 24, inclusive, is reported in 333 F.2d 951 (1964).

Jurisdiction

The judgment of the Court of Appeals for the Ninth Circuit was made and entered on June 9, 1964. Petitioners' petition for rehearing was denied on August 5, 1964. Copies thereof are appended to this petition in Appendix B, infra, at pages 10 to 25, inclusive. This action was presented to said Court of Appeals by way of an appeal under the provisions of 28 U.S.C. 1291.

Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) to review the aforesaid judgment which affirmed opinions of the United States District Court for the Southern District of California, Central Division, holding that that court did not have jurisdiction of the parties or the subject matter. (Appendix B, *infra*, page 8. and R.199.)

Certiorari should also be granted in accordance with Rule 19.1(b) of Rules of the Supreme Court of the United States. (Appendix A, *infra*, page 4.)

Questions Presented

In this posture of the case petitioners are uncertain exactly which questions should be presented. We ask that the Court consider every subsidiary question fairly comprised within the following three questions.

Question I

Can this Action be Defeated by Refusing to Retain Jurisdiction When the Facts Alleged and Uncontroverted Show that the Suit is for Redress of Constitutional Deprivations, and Jurisdiction is Founded on the Civil Rights Acts and the Fourteenth Amendment to the Constitution of the United States?

The Federal questions involved are substantial, as the case involves the fundamental rights of petitioners guaranteed to them under the Fourteenth Amendment to the Constitution of the United States: (1) the privileges or immunities clause, (2) the due process clause, and (3) the equal protection of the laws clause.

The deprivations were right of notice, right to be heard, right to vote, and right to be free from invidious discrimination as compared to non-riparian property owners.

Question II

Can this Action be Defeated by Refusing to Retain Jurisdiction on the Theory that Petitioners' Properties Have Not Yet Been Physically Taken Without Due Process of Law?

If petitioners had not been deprived of their constitutional rights enumerated under Question I herein, the

waterworks district could never have been formed. It is now ready to exercsie the right of eminent domain. Respondents have advised petitioners in writing that their November 1964 tax bill will have an additional assessment of $3.50 per $100.00 of assessed evaluation. This is necessary to cover payments on the 40 year term bonds for the waterworks district.

If petitioners had not been deprived of their constitutional rights enumerated under Question I herein (supra) the waterworks district could not have been formed. It would not have been necessary for petitioners to seek the aid of the courts to have their rights declared; and we would not now be before this Honorable Court.

Question III

Can This Action be Defeated by Refusing to Retain Jurisdiction When the Refusal is Based on Negative Facts?

The United States Court of Appeals for the Ninth Circuit, in headnotes Nos. 10, 11, 12, 14, and for all constructive purposes No. 15, has listed five (5) points as "Reasons" for affirming the district court's order of dismissal. None of these reasons are supported by allegations in the complaint nor by anything that might be inferred therefrom nor from anything else anywhere else, including the district court.

The United States Court of Appeals erroneously held:

> The prime purpose of the suit was to put the waterworks district out of business.

Pierre, et al. v. Jordan, et al., 333 F.2d 951 (at p. 951).

Constitutional Provisions, Statutes, and Rules Involved

The Constitutional provisions involved are the Fourth Amendment and the Fourteenth Amendment to the Constitution of the United States.

The Statutes involved are 28 United States Code, sections 1254(1), 1291, 1331, 1343(3), 2201-2202, 2281, and 2284; and 42 United States Code, sections 1983 and 1988.

The Rule involved is United States Supreme Court, Rule No. 19.1(b).

(They are printed in Appendix A, *infra*, pages 1 to 5, inclusive.)

Statement

This case clearly arises under the Constitution and law of the United States. Allegations that property interests had been disturbed without due process of law are effectively pleaded. Allegations are effectively pleaded that petitioners had been deprived of their constitutional rights to protect their properties in that the requirements of notice were not met; petitioners were denied their right to be heard on the matter; all their protests and requests for exclusion were denied; they were invidiously discriminated against in favor of the non-riparian property owners; and they were denied their right to vote on the matter.

Throughout this proceeding petitioners have sought the aid of the courts to have their constitutional rights declared and to prevent respondents from taking ir-

revocable action which would inflict irreparable damages, the effects of which can never be undone, upon petitioners.

On July 25, 1963 petitioners herein filed their complaint in the district court praying for the convening of a three-judge court under 28 U.S.C. Sec. 2281, et seq. (set forth in Appendix A) to test the constitutionality of certain California statutes that had been and are being applied invidiously against petitioners for the seizure of their properties without due process of law and in violation of the equal protection of the laws clause of the Fourteenth Amendment. Petitioners herein there prayed for declaratory judgment and injunctive relief.

Jurisdiction was based and effectively pleaded under:

1. Constitution of the United States—Amendments IV and XIV.
2. 28 United States Code, sections 1331(a); 1343 (3); 2201-2202; 2281; and 2284; and
3. 42 United States Code, sections 1983 and 1988.

It is further pleaded and alleged that the taking of the within petitioners' private properties without due process guaranteed by the Fourteenth Amendment of the Constitution of the United States, and over their right to be heard, and over their protests, and over the denial of their right to vote on the issue, is without authority of law and constitutes an illegal invasion of petitioners' constitutional rights. (Const.Amends. IV and XIV.) (R. 2-67.)

Severe and irremedial damages not susceptible of monetary measurement will be inflicted upon petitioners

in that without the due process secured to them by the U. S. Constitution:

1. They will be deprived of their riparian property.
2. They will be deprived of their riparian property rights.
3. They will be deprived of their water supply.
4. Their natural water supply will be depleted.
5. Their aquifiers will be destroyed.
6. Their riparian land will become non-riparian wasteland.
7. They will be saddled with a tax lien on their properties of approximately Two Million Dollars ($2,000,000), the obligation to pay of which is mandatory. It is enforced by the sale of their properties.
8. They will be forced to finance their own destruction.

The requirements of due process guaranteed by the Fourteenth Amendment to the Constitution of the United States as *unanimously* enunciated by this Court in *Schroeder v. City of New York*, 371 U.S. 208 (1962) were not met in the case at bar.

The Record[1] shows that throughout the entire proceedings respondents have maintained the position that they

1. "R....." as used herein refers to pages as numbered by the clerk of the court of the Transcript of Record on Appeal in the United States Court of Appeals for the Ninth Circuit — and the RECORD herein.

are operating under California statutes and that "Notice" to petitioners in the within matter was not required.[2a, 2b, 2c]

Although the words "fraud" and "conspiracy" are not used *per se* in the complaint, they are as effectively pleaded as if they had been spelled out a hundred times. The facts alleged and uncontroverted show that the area to be served by the proposed waterworks district is (except for rattlesnakes and jack rabbits) uninhabited wastelands that are owned by private individuals. The enterprise is not for a "public" use but is for a private purpose for which taxes are to be levied on petitioners' properties.

The entire area is arid desert. There is scarcely enough water for the domestic needs of the present inhabitants who are riparian property owners and the petitioners herein. Theirs is the only source of water supply.

This is a matter in which there is the right of eminent domain. It must be presumed that the right of eminent domain will be exercised. Petitioners' water supply will

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2a. *R. 80 lines 17-20.* Quote: "The Legislature, therefore, without violating any constitutional provisions, might have omitted from the act any provision for notice or hearing and empowered the board to initiate and complete the annexation without notice."

2b. *R. 81 lines 27-28.* Quote: "The Code would have been valid had it made no provision for protests whatever."

2c. *R. 169 lines 25-27.* Quote: "The notice given to all property owners of the hearing on the petition for formation of the waterworks district was admittedly not required on May 23, 1963, the date of the hearing."

be taken from their homes and will be pumped to uninhabited wastelands owned by private persons to build up private fortunes through the sale of real estate.

Section 55180 of the California Water Code provides that in any Special Election to authorize the issuance of bonds that only "residents" of the proposed district may vote[3].

Respondents designed the boundaries of the proposed waterworks district so as to leave out the homes of 15 petitioners but to take in petitioners' wells some 100 to 150 feet from their homes. Petitioners live in their homes and not in their wells.

By this machination these 15 petitioners, who are resident voters there, were denied their constitutional right to vote at the special election held for the sole purpose of authorizing the issuance of the bonds which are a lien on their properties. The obligation to pay is mandatory; it is enforced by the sale of the properties.

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3. Section 55180 of California Water Code: Call of Special Election; purposes.

"The board of supervisors shall, by ordinance or resolution adopted at a regular or special meeting after having acquired jurisdiction to proceed in the formation of a district, provide for and order the holding of a special election in the proposed district to submit to the qualified voters thereof the proposition of forming the district and incurring a debt by the issuance of bonds for the district for the purpose set forth in the petition for the formation of the district, if a bonded indebtedness is to be incurred."

The proceeds from the taxation of petitioners' properties are to be used to put in pipelines and pumping facilities for the purpose of pumping petitioners' water to uninhabited wasteland owned by private persons to build up private fortunes through the sales of real estate.

The facts are that petitioners' sole objective and only purpose of the suit was to redress the deprivation of their rights guaranteed and secured to them by the Constitution and laws of the United States.

In its decision the Court of Appeals takes judicial notice of petitioners' effective allegations that they had been deprived of their rights under the due process and equal protection clauses of the Fourteenth Amendment.

The court, then acting under a mistaken assumption or plain error, concluded that:

1. The suit was not to redress petitioners' constitutional deprivations. *Pierre v. Jordan (supra)* Headnote 11.

2. Deprivation of constitutional rights was asserted only as means of achieving the objective of putting waterworks district out of business. *Pierre v. Jordan (supra)* Headnote 12.

3. All other constitutional questions sought to be raised were incidental to purpose of setting aside formation of water district, which was gist of action. *Pierre v. Jordan (supra)* Headnote 14.

Based upon these erroneous conclusions said court then held:

The prime purpose of the suit was to put the waterworks district out of business.

In the premises so concluded, the subject matter was not cognizable under the Civil Rights Act; and district court lacked jurisdiction.

Summary of Reasons for Granting the Writ

I. Sections of California Waterworks Code are unconstitutional. Substantial questions of the constitutional rights of all persons everywhere who own riparian property in the State of California are involved.

II. This Court should grant certiorari because the decision is in conflict with federal law on issue of jurisdiction.

III. The decision of the Court of Appeals is not supported by facts. It is contrary to petitioners' allegations that are admitted by respondents.

IV. This Court under its supervisory control of matters originating in the federal courts should review the decision of the Court of Appeals when a fundamental allegation has been taken out of context.

V. The Court of Appeals erred in its *redecision* of the case to support their decision to affirm the opinion of the District Court. The decision is a negative fact.

VI. This Court should grant certiorari because the decision is in conflict with decision of this Court on jurisdiction.

VII. This Court should grant certiorari because the decision is in conflict with decisions of this Court on due process.

VIII. This Court should grant certiorari because the decision is in conflict with decisions of this court on what is a constitutional issue.

IX. The Court of Appeals has decided an important question of procedural law contrary to a recent decision of this Court.

Reason I.

Sections of California Waterworks Code are Unconstitutional. Substantial Questions of the Constitutional Rights of All Persons Everywhere Who Own Riparian Property in the State of California are Involved.

The important questions evolving from these statutes have not been, but should be, settled by the Supreme Court of the United States. These federal questions are substantial as they affect the fundamental constitutional rights of petitioners herein and all other persons everywhere who own riparian property in the State of California.

The proposition is that the California Water Code authorizes municipalities under the guise of eminent domain to take the real property of the citizen. It also authorizes municipalities to issue its bonds that are secured by a lien on the citizen's property; and under the guise of taxation to pay the bonds to take his personal property.

Riparian property owners are subjected to the will of all of the officials who work under the provisions of the Waterworks Act. Unscrupulous officials by the use of the Act can sequester real property under eminent domain and raise money under taxation and use it in the aid of an enterprise purely private in nature for the profit and gain of private individuals. This perverts the right of eminent domain and also the right of taxation.

In this instance the petition for the formation of the waterworks states that the purpose is to establish waterworks for the use of the *inhabitants* of the area, but this Court cannot fail to see through the guise and perceive the falsity of the pretext. The facts alleged and uncontroverted show that the area to be served by the proposed waterworks is *uninhabited* except for rattlesnakes and jack rabbits.

The primary object, in fact the only real and true one, is to enable the county by the right of eminent domain and moneys raised through taxation to engage in an enterprise of a purely private nature for the profit and gain of private individuals through the sales of small parcels of real estate.

The *mode* prescribed in a state statute for the exercise of a power is the "measure of the power", and if this is in direct conflict with constitutional guarantees the state statute or statutes must yield to the supreme law of the land.

The California Water Code and specifically the sections challenged in this action are unconstitutional in that they palpably offend the due process clause of the

Fourteenth Amendment. Under their thin guise is a latent attempt to evade and avoid the curative power of the Fourteenth Amendment. This is borne out in the Statement — footnotes 2a, 2b, and 2c, (supra) wherein it is cited that respondents herein avow that they are operating under the California Water Code and that "Notice" to petitioners was not *required* at all.

These statutes, one running into the other as it were and each one purporting to grant a "measure of the power", create a myriad of situations to suit the purposes of despotic power. But they cannot abide the pure atmosphere of constitutional rights and guarantees, and to this end the statutes and the manner of their application to the petitioners must yield to the supreme law of the land.

It matters not that if in this process the purported Waterworks #37 and the plan to finance it must be declared to be the unconstitutional thing that it is; and that it falls back into the abysmal labyrinth from which it originated and into the hands of the troglodytes that sired it.

Reason II.

This Court Should Grant Certiorari Because The Decision Is In Conflict With Federal Law On Issue of Jurisdiction.

The court below erroneously held that the action was not maintainable under any of the Civil Rights statutes.

Respondents were acting under color of California state law, namely the Waterworks Code, and petitioners

were deprived of their rights, privileges and immunities secured by the Fourteenth Amendment of the Constitution of the United States. Federal jurisdiction is specifically conferred by 28 U.S.C. Sec. 1343(3) and 42 U.S.C. Sec. 1983.

Reason III.

The Decision of The Court of Appeals Is Not Supported By Facts. It Is Contrary To Petitioners' Allegations That Are Admitted By Respondents.

Respondents contended that petitioners had no constitutional right to notice. (See Statement—footnotes 2a, 2b, and 2c, *supra.*)

Reason IV.

The Court Under its Supervisory Control of Matters Originating in the Federal Courts Should Review the Decision of the Court of Appeals Where a Fundamental Allegation Has Been Taken Out of Context.

It is alleged that the proposed waterworks is not for a *public* purpose but it is in fact a *private* enterprise designed to benefit a few individuals. This was taken out of context. The Court of Appeals said:

> "The complaint challenges the formation and financing of the district on many grounds having no clear relationship to constitutional issues. For example, it is alleged that: . . . the county engineer's office made surveys on posted private property without permission; . . ." (*Pierre, et al. v. Jordan, et al.,* (supra) page 957 — Footnote 12.)

The record proves that the facts alleged were that:

At the time the engineer's office made the survey for the proposed waterworks, which was prior to the filing of the petition for its formation, that that office and all defendants working out of that office *knew* that the proposed system that they were then surveying was for a *private* interest instead of for a *public* purpose and *public necessity*. It was further alleged that this fact was particularly within the defendants' knowledge because if they were qualified to read a transit level to make the engineering survey, that they ought also to be able to read the many signs posted on the property they were then surveying, to wit:

PRIVATE PROPERTY
PERMISSION TO PASS OVER
REVOCABLE AT ANY TIME

No matter how much one stretches his imagination he is unable to understand how the Court of Appeals put the construction it did on those allegations. It is irreconcilable with reason.

Reason V.

The Court of Appeals Erred in its "Redecision" of the Case to Support Their Decision to Affirm the Opinion of the District Court. The Decision is a Negative Fact.

The guarantees of the Fourth Amendment should be liberally construed to prevent impairment of the protection which it was intended to secure. It forbids two things: (1) illegal search, and (2) illegal seizure.

"Effects" include private property. There can be no "probable cause" to seize petitioners' effects either through the right of eminent domain or taxation for an enterprise that is not for a *public purpose*.

The Fourteenth Amendment in providing that no state shall deprive any person of his property without due process of law prevents any state from raising money under the guise of taxation for purposes not *public purposes*.

The due process clause of the Fourteenth Amendment also guarantees to the citizens their constitutional rights of "notice" before property interests are to be disturbed, before assessments are made, or before any penalties or forfeitures might be suffered for mere failure to act. Recent cases illustrating the point are: *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306; *Covey v. Town of Somers*, 351 U.S. 141; *Walker v. Hutchinson City*, 352 U.S. 112; *Schroeder v. City of New York*, 371 U.S. 208 (1962).

Petitioners were denied their constitutional rights of due process before and during the formation of the proposed waterworks. It was this very deprivation of their constitutional rights in the first instance that enabled the respondents to create the thing.

Petitioners have affirmatively shown that it is not for a *public* purpose; but on the contrary it is a *private* enterprise designed for private individuals to build up private fortunes through the sales of small parcels of real estate.

The questions are:

(1) Whether the eminent domain is or is not to be for a *public* purpose and *public necessity?*

(2) Whether the special taxes to be assessed to finance it, are or are not to be for a *public* purpose arising out of a *public necessity?*

These are important constitutional questions. They require a judicial answer. The Court of Appeals avoided rendering its decisions on these fundamental questions. To accomplish this, it arrived at some negative facts and non-existent purposes for the suit. It then concluded that upon these grounds the court lacked jurisdiction. Upon these fallacious premises it then concluded that petitioners could not invoke any of the sections of the Civil Rights Acts set forth in their Jurisdictional Statement because petitioners' *purpose* was to "put the waterworks out of business". Indeed, the Court of Appeals put the cart before the horse. It aborted the action.

Reason VI.

This Court Should Grant Certiorari Because the Decision is in Conflict With Decision of This Court on Jurisdiction.

The Court of Appeals divested itself of jurisdiction by taking fundamental allegation from context; by refusing to grant redress for deprivations of constitutional rights of Due Process; and then stating that what was left in the complaint was not within its jurisdiction.

In *Allegheny County v. Frank Mashuda Co. (1959),* 360 U.S. 185, this Court held that the important question of whether District Court had discretion to abstain from the exercise of jurisdiction in circumstances of suit challenging validity of expropriation, impelled Supreme Court to grant certiorari.

Reason VII.

This Court Should Grant Certiorari Because the Decision is in Conflict with Decisions of this Court on Due Process.

There was a denial of Due Process and the Equal Protection Clauses of the Fourteenth Amendment. The court said that the deprivations of constitutional rights was asserted only as a *means* "to put the waterworks out of business".

It refused to grant redress of deprivations of constitutional rights. It refused to take into consideration the fact that if petitioners had not been deprived of these constitutional rights the waterworks could never have been formed. The court's reasoning or lack of it is in direct conflict with decisions of this Court in: *Mullane v. Central Hanover Trust Co.,* 339 U.S. 306; *Covey v. Town of Somers,* 351 U.S. 141; *Walker v. Hutchinson City,* 352 U.S. 112; and *Schroeder v. City of New York,* 371 U.S. 208 (1962).

Reason VIII.

This Court Should Grant Certiorari Because the Decision is in Conflict with Decisions of this Court on what is a Constitutional Issue.

In its decision the court below states that the complaint challenged the formation and financing of the district on grounds having no clear relationship to constitutional issues. This Court has long held that taxes cannot be levied, assessed, or collected for a purely private enterprise.

Loan Association v. Topeka, 20 Wallace 655; 22 Lawyers' Ed. 455, was not considered or decided with reference to the Fourteenth Amendment but on principles of general constitutional law.

The Fourteenth Amendment prohibits the Legislature of the State of California from authorizing the counties or municipalities in the state to exercise their right of eminent domain and from levying taxes to finance an enterprise for private individuals so that they can build up fortunes through the sales of small parcels of real estate.

Reason IX.

The Court of Appeals has Decided an Important Question of Procedural Law Contrary to a Recent Decision of this Court.

In its decision the Court of Appeals subtly suggests that petitioners start their suit all over again in the state Courts. This was what happened at the district court level in *England et al., v. Louisiana State Board of*

Medical Examiners, et al., 84 S. Ct. 461. After seven years of litigation the case finally reached this Court and on January 13, 1964 the Court held:

1. The right of a party plaintiff to choose a federal court when there is a choice cannot be properly denied.
2. When a federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take jurisdiction.

In the furtherance of justice this petition should be granted. Petitioners should not have to come back to this Honorable Court from the back door of the California Supreme Court.

CONCLUSION

This cause can be resolved only by a decision of this Court on the vital constitutional questions herein presented. For the reasons set forth above we pray that this petition for a writ of certiorari be granted.

Respectfully submitted,

HELENE P. PIERRE

Petitioners — Pro Se.

APPENDIX A

Constitution of the United States

Amendment IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment XIV. (Sec. 1). All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutes

28 United States Code, section 1254(1). Cases in courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree . . .

28 United States Code, section 1291. The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . .

28 United States Code, section 1331(a). The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000.00, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

28 United States Code, section 1343(3). The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: —

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress provided for equal rights of citizens or of all persons within the jurisdiction of the United States . . .

28 United States Code, sections 2201-2202. Declaratory Judgment Act.

Sec. 2201. Creation of Remedy. In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States and the District Court for the Territory of Alaska, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such . . .

Sec. 2202. Further Relief. Further necessary or proper relief based on a declaratory judgment or decree may

be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

28 United States Code, section 2281. Injunction against enforcement of State statute; three-judge court required—

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

28 United States Code, section 2284. Three-judge district court; composition; procedure—

In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges

shall serve as members of the court to hear and determine the action or proceeding.

42 United States Code, section 1983. Civil Action for Deprivation of Rights.

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at laws, suit in equity or other proper proceeding for redress. (Rev.Stat. Sec. 1979)

42 United States Code, section 1988. Proceedings in Vindication of Civil Rights.

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication . . . (Rev.Stat. Sec. 722)

Rules

Rules of the United States Supreme Court, Rule 19.1(b). Considerations Governing Review on Certiorari.

1. (b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law;

or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

APPENDIX B

COURT ORDER
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

I am denying plaintiff's motion for a temporary restraining order to hold the election in abeyance. There has been no sufficient showing of irreparable damage. The election is to be held. However, if the outcome of the election authorizes the issuance of the bonds, I will entertain a motion by plaintiff to restrain the issuance of the bonds until there has been a hearing on whether a three-Judge court should be convened to test the constitutionality of California Government Code, Sec. 6066. Sitting in equity, I am taking judicial notice that there is a question of the constitutionality of this Section under the Due Process Clause of the Fourteenth Amendment. *Schroeder vs. City of New York*, 371 U.S. 208 (1962).

This motion to restrain issuance of the bonds is to be entertained if such issuance is authorized at the election tomorrow.

/s/ THURMOND CLARKE

FILED: July 29, 1963.

Oral Order in Open Court (contemporaneously)

Promissory notes and any other debentures of any nature whatsoever will also be restrained.

Filed and Entered July 29, 1963.

PIERRE V. JORDAN — No. 63-882-TC — (Civil) — United States District Court for the Southern District of California — Central Division.

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

HELENE P. PIERRE, *Plaintiff,* v. FRANK M. JORDAN, Secretary of State, State of California, et al., *Defendants.*	No. 63-882-TC Civil ORDER ON DEFENDANTS' MOTION TO DISMISS.

This matter having come before the Court on motion of all Defendants to dismiss for want of jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure,

AND IT NOW APPEARING TO THE COURT that this Court does not have jurisdiction over the subject matter of this cause of action;

IT IS NOW THEREFORE ORDERED that the motion by all defendants to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure shall be and is hereby granted.

IT IS FURTHER ORDERED that the temporary restraining order filed August 14, 1963 shall be and is hereby vacated.

IT IS FURTHER ORDERED that the Clerk shall this day serve copies of this Order, by United States Mail, upon the Plaintiff and upon the attorneys for the defendants appearing in this action.

DATED: This 30th day of August 1963.

/s/ THURMOND CLARKE
United States District Judge.

Filed: August 30, 1963.

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

HELENE P. PIERRE, *Plaintiff,* v. FRANK M. JORDAN, Secretary of State, State of California, et al., *Defendants.*	No. 63-882-TC Civil ORDER ON PLAINTIFF'S MOTION TO VACATE AND SET ASIDE ORDER OF DISMISSAL.

This matter having come before the Court on motion of Plaintiff to vacate and set aside the Order on Defendants' Motion to Dismiss heretofore entered by this Court on August 30, 1963,

AND IT NOW APPEARING TO THE COURT that this Court does not have jurisdiction over either the parties or the subject matter of this cause of action;

IT IS NOW THEREFORE ORDERED that Plaintiff's motion to vacate and set aside the said Order be and hereby is DENIED.

IT IS FURTHER ORDERED that the Clerk of the Court this day shall serve copies of this Order upon the Plaintiff and upon attorneys for the Defendants appearing in this action.

DATED: This 27th day of September, 1963.

/s/ THURMOND CLARKE
United States District Judge.

Filed: September 27, 1963.

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

HELENE P. PIERRE, *Plaintiff,* v. FRANK M. JORDAN, Secretary of State, State of California, et al., *Defendants.*	No. 63-882-TC Civil ORDER ON PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT.

This matter having come before the Court on the motion of Plaintiff for default judgment against John A. Lambie, one of the Defendants herein,

AND THIS ACTION HAVING BEEN HERETOFORE DISMISSED by this Court as to all defendants on August 30, 1963, and Plaintiff's Motion to Vacate and Set Aside the Order of Dismissal having this day been denied;

IT IS NOW THEREFORE ORDERED that Plaintiff's Motion for Default Judgment against said John A. Lambie be, and the same hereby is, DENIED.

IT IS FURTHER ORDERED that the Clerk of the Court this day shall serve copies of this Order upon the Plaintiff and upon attorneys for the Defendants appearing in this action.

DATED: This 27th day of September 1963.

/S/ THURMOND CLARKE
United States District Judge.

Filed: September 27, 1963.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HELENE P. PIERRE, et al. *Plaintiffs-Appellants,* *v.* FRANK M. JORDAN, Secretary of State of California, et al., *Defendants-Appellees.*	No. 19,012

[June 9, 1964]

Appeal from the United States District Court for the Southern District of California, Central Division

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Before: BARNES, HAMLEY and DUNIWAY, Circuit Judges HAMLEY, Circuit Judge:

This action was brought to obtain declaratory and injunctive relief which would forestall the formation and financing of Los Angeles County Waterworks District No. 37, located in Antelope Valley in the vicinity of Acton, California. The plaintiff, Helene P. Pierre, who appears throughout *in propria persona,* is a resident of Acton and owns property which would be within the proposed district and on which there is ground water which might be taken for district purposes. She brought the suit as a class action on behalf of herself and approximately three hundred other property owners similarly situated.

Named as defendants were three officials of the State of California,[1] twelve officials of Los Angeles County,[2] twenty-four individuals who were alleged to be engaged in the real estate business, or as promoters, or as both, and two real estate companies.

In her complaint Mrs. Pierre relied upon several provisions of the Civil Rights Act,[3] the Declaratory Judgment Act,[4] and the Three-Judge Court Act,[5] as bases for district court jurisdiction.

After filing the complaint Mrs. Pierre applied for a temporary restraining order to enjoin one of the defendants, Benjamin S. Hite, Registrar of Voters, from holding a scheduled special election to vote on a proposed bond issue for District No. 37. At the same time she moved for the convening of a three-judge district court pursuant to 28 U.S.C. § 2281 et seq.

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[1]Frank M. Jordan, Secretary of State, Edmund G. Brown, Governor, and Stanley Mosk, Attorney General.

[2]Benjamin S. Hite, Registrar of Voters, Warren M. Dorn, Frank G. Bonelli, Kenneth Hahn, Ernest E. Debs and Burton W. Chase, members of the Board of Supervisors, Gordon T. Nesvig, Clerk of the Board of Supervisors, John A. Lambie, County Engineer, James T. Rostron, Division Engineer, Kenneth R. Putnam, Supervising Civil Engineer, Phillip E. Watson, Tax Assessor, and Harold J. Ostley, Tax Collector.

[3]The provisions of the Civil Rights Acts relied upon are 28 U.S.C. § 1343(3) (1958) and Rev. Stat. §§ 1979 and 722 (1875), 42 U.S.C. §§ 1983 and 1988 (1958).

[4]28 U.S.C. §§ 2201 and 2202 (1958).

[5]28 U.S.C. §§ 2281 (1958) et seq.

After a hearing the district court denied the application for a temporary restraining order. It was provided in the order of denial, however, that if the outcome of the election authorized the issuance of the bonds, the court would entertain a motion by plaintiff to restrain the issuance of the bonds until there had been a hearing on whether a three-judge court should be convened " . . . to test the constitutionality of California Government Code, Sec. 6066."

At the special election a majority voted in favor of issuance of the bonds. Mrs. Pierre then applied for a temporary restraining order to enjoin issuance of the bonds so authorized pending the convening of a three-judge district court. Before a hearing could be held on that application the defendant state and county officials moved to dismiss the action for failure to state a claim against them upon which relief can be granted, and for lack of jurisdiction " . . . because no substantial federal question is involved."

All of these motions came on for hearing at the same time and thereafter, on August 30, 1963, an order was entered dismissing the action for lack of jurisdiction over the subject matter. In the same order the temporary restraining order was vacated. Plaintiff's motion to convene a three-judge court was not specifically acted upon, but dismissal of the action constituted denial of that motion.

On September 10, 1963, Mrs. Pierre moved to vacate and set aside the order of dismissal, and to reinstate the action. In a supporting memorandum, she for the first

time suggested, as an additional basis of district court jurisdiction, federal-question jurisdiction pursuant to 28 U.S.C. § 1331 (1958).[6] Notice of these motions was served by being placed in the mail on September 12, 1963. On September 27, 1963, an order was entered denying the motion to vacate and set aside the order of dismissal, it being recited that the court did not have jurisdiction over either the parties or the subject matter.

On October 7, 1963, Mrs. Pierre filed a notice of appeal from the order of dismissal entered on August 30, 1963, and from the order entered on September 27, 1963 denying her motion to vacate and set aside the order of dismissal.

After the appeal had been argued and submitted in this court we raised the questions of whether the appeal from the order of August 30, 1963 should be dismissed on the ground that it is not timely, and whether the order of September 27, 1963, denying the motion to vacate and set aside the order of dismissal, should be affirmed on the ground that this motion was not timely. At our request the parties submitted supplemental briefs on these questions.

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[6]In this memorandum, Mrs. Pierre also suggested that there was jurisdiction because of diversity of citizenship. See 28 U.S.C. § 1332

In her opening brief in this court, however, she disclaims diversity jurisdiction, and, in any event, under the allegations of the complaint, diversity of citizenship in the sense referred to in section 1332 did not exist.

We consider first the questions raised on our own motion.

It is provided in Rule 73(a), Federal Rules of Civil Procedure, that the time within which an appeal may be taken shall be thirty days from the entry of the judgment appealed from, with exceptions not here material. The notice of appeal herein was not filed within thirty days from the entry of the order of August 30, 1963.

But Rule 73(a) further provides that the running of the time for appeal is terminated by a timely motion under Rule 50(b) for judgment notwithstanding the verdict, under Rule 52(b) to amend or make additional findings of fact, under Rule 59 to alter or amend the judgment, or under Rule 59 for a new trial. When the time for appeal is so terminated, the full time for appeal commences to run from the entry of an order granting or denying any of the first three kinds of motions; or from the entry of an order denying the fourth kind of motion.

Mrs. Pierre's motion to vacate and set aside the order of dismissal was, in effect, a motion under Rule 59 to alter or amend the judgment. *Walker v. Bank of America*, 9 Cir., 268 F.2d 16, 20. It was therefore the kind of motion which, under Rule 73(a), terminated the running of the time for appeal, providing the motion was "timely."

Rule 59(e) provides that a motion to alter or amend the judgment shall be served not later than ten days after entry of the judgment. Mrs. Pierre's motion to vacate and set aside the order of dismissal was not served

until September 12, 1963, when it was mailed to counsel for defendants. As this was the thirteenth day after entry of the order of dismissal on August 30, 1963, the motion was not, strictly speaking, timely.

But the motion was treated in the district court as timely, and was dealt with on the merits. Defendants filed a memorandum in opposition to the motion, dealing with the merits and making no contention that the motion was untimely. The district court denied the motion, not because it was untimely, but because " . . . this Court does not have jurisdiction over either the parties or the subject matter. . . . "[7] Had Mrs. Pierre, a layman, been made aware at the time her motion to vacate and set aside was denied, on September 27, 1963, that the motion was untimely, and therefore could not terminate the running of the time for appeal, as provided in Rule 73(a), she still would have had two days in which to file a timely notice of appeal from the order of August 30, 1963.

Under the stated facts we are of the view that Mrs. Pierre was entitled to conclude that the district court regarded the motion as timely, to be dealt with on the merits. This being the case, unique circumstances exist requiring that her motion be regarded as timely and as

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[7]Since the original order of dismissal was predicated only on lack of jurisdiction over the subject matter the recital, in the order denying the motion to vacate and set aside, of the additional ground of lack of jurisdiction over the person, indicates that the motion to vacate and set aside was considered on the merits and was not denied as untimely.

effectively terminating the running of the time for appeal. See *Thompson v. Immigration & Naturalization Service*, 375 U.S. 384. Since the notice of appeal was filed within thirty days after denial of the motion to vacate and set aside, it was timely both as to that order and as to the order of August 30, 1963.

Turning to the specifications of error, Mrs. Pierre first argues that the district court was without power to dismiss the action for lack of jurisdiction, because this was a matter which should have been passed upon by a three-judge district court convened under 28 U.S.C. § 2281 et seq. Under that statute a three-judge court is to be convened only where the constitutionality of a state statute is brought into question.[8]

In the complaint the constitutionality of two statutes of the State of California are questioned. One of these is California Water Code, § 55103, which provides that the petition for the formation of a county waterworks district

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[8]Section 2281 reads:

"**§ 2281. Injunction against enforcement of State statute; three-judge court required.**

"An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

shall be presented at a regular meeting of the board of supervisors ". . . and shall be signed by not less than 25 per cent of the freeholders resident within the proposed district, or by not less than 25 percent of the freeholders resident and nonresident within the proposed district, including not less than 15 percent of such resident freeholders."

The other statute challenged in the complaint on constitutional grounds is California Water Code, § 55180, which provides that the board of supervisors shall, by ordinance or resolution, adopted at a regular or special meeting after having acquired jurisdiction to proceed in the formation of a district, provide for and order the holding of a special election in the proposed district. The purpose of such an election, according to this statute, is to submit to the qualified voters of the proposed district the proposition of forming the district and incurring a debt by the issuance of bonds of the district, if a bonded indebtedness is to be incurred.

In its order of July 29, 1963, denying the application for a temporary restraining order to enjoin the special election, the district court indicated that it would entertain a motion by Mrs. Pierre to restrain issuance of the bonds until there has been a hearing on whether a three-judge court should be convened to test the constitutionality of California Government Code § 6066. This is a general statute providing the manner in which "publication of notice" is to be made where publication for two

weeks is called for.[9] We will deem the complaint to be amended to add section 6066 as an additional state statute questioned on constitutional grounds.

In Mrs. Pierre's opening brief on appeal, she levels a constitutional challenge against five additional state statutes.[10] We will regard the complaint as amended to add these as additional statutes challenged for constitutionality.

Section 2281, requiring three-judge district courts in certain cases, does not apply where, although the constitutionality of a statute is challenged, the defendants are local officers and the suit involves matters of interest

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[9]Section 6066 reads:

"**§ 6066. Two weeks**

"Publication of notice pursuant to this section shall be once a week for two successive weeks. Two publications in a newspaper published once a week or oftener, with at least five days intervening between the respective publication dates not counting such publication dates, are sufficient. The period of notice commences upon the first day of publication and terminates at the end of the fourteenth day, including therein the first day."

[10]These statutes, all having to do with the formation and financing of county waterworks districts, are California Water Code, § 55133, relating to publication of notice; § 55152, relating to board action on petitions and protests; § 55184, relating to publication and posting of ordinances or resolutions ordering the holding of special elections; § 55186, providing for the formation of a district and the issuance of bonds if there is a majority favorable vote; and § 55187, providing for the mailing of notices and the validation of past acts and proceedings.

only to a particular municipality or district. *Ex parte Collins*, 277 U.S. 565, 568.

This suit involves matters of interest only to those directly affected by District No. 37. All of the official defendants are local officers except three, who are state officers. But of these three, injunctive relief is sought only against one, namely, Frank M. Jordan, Secretary of State of California. As to him, the complaint does not even formally allege a basis for equitable relief, for it is not alleged that he has had anything to do with the formation and financing of that district. The single district judge was empowered to so determine. (*Idlewild Bon Voyage Liquor Corp. v. Epstein*, 370 U.S. 713, 715), and such a determination inheres in the judgment rendered.

The result of such determination is to leave the local officers as the only official defendants against which equitable relief involving the constitutionality of the statute is sought in connection with matters of only local interest. It follows that, under the rule of *Ex parte Collins*, referred to above, section 2281 does not apply and the district judge was not required to convene a three-judge court.

Mrs. Pierre next contends that the district court erred in determining that it did not have jurisdiction over the subject matter and in dismissing the action on that ground. As before stated, she relies on several statutes in asserting that the district court had jurisdiction over the subject matter. First, and primarily, she relies upon various provisions of the Civil Rights Acts, namely, 28

U.S.C. § 1343(3), and Rev. Stat. §§ 1979 and 722 (42 U.S.C. §§ 1983 and 1988).

Her prime objective in bringing the suit is to undo the purported formation of District No. 37, including the plan to finance the project through the issuance of bonds. In her effort to accomplish this she has, as stated above, alleged that certain state statutes governing the manner in which such districts are to be formed, are violative of the Due Process Clause of the Fourteenth Amendment. She has also alleged that in various particulars not involving the validity of state statutes she, and those whom she undertakes to represent in this suit, have been deprived of their rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment.[11] As before indicated, however, the prime purpose of the suit is not to redress these asserted constitutional deprivations *per se* but, on these and other

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[11]It is alleged, for example, that: Mrs. Pierre and those similarly situated were unfairly treated and were denied the right to speak at hearings which were held; the notices of hearing were inadequate as to time; there was defective and inadequate posting and publication of the notice of election; the protests of riparian property owners were incorrectly counted and reported, this constituting discrimination; false statements were made at the hearing by public officials; the effect of the formation of the district and the issuance of the bonds will be to take or destroy private property for the benefit of private persons; the financing plan constitutes an assessment on property incapable of benefiting from the assessment; some non-property owners were allowed to vote at the election, and some property owners were not permitted to vote.

grounds,[12] to put the waterworks district out of business.

The purpose of 28 U.S.C. § 1343(3), Rev. Stat. § 1979, and Rev. Stat. § 722, is to provide a means of obtaining effective redress in the federal courts against those who, acting under color of state law have subjected, or have caused to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges or immunities secured by the Constitution and laws of the United States. But these statutes contemplate that the prime objective of the federal suit is to redress such rights. Where there is some other principal objective of the litigation, and the deprivation of constitutional rights is asserted only as a means of achieving that objective, the subject matter is not cognizable

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[12]The complaint challenges the formation and financing of the district on many grounds having no clear relationship to constitutional issues. For example, it is alleged that: persons favoring the project made false statements at a hearing; real estate promoters engaged in improper action in developing subdivisions; some persons signed the petition three or four times; those who circulated the petitions misrepresented the facts; if the proposed system were installed there would never be enough subscribers to pay for the maintenance; the county engineer's office made surveys on posted private property without permission; the petitions contained false statements; while an official letter stated that water service will begin with sixty customers this will not be possible; while an official letter stated that the pipelines will be 9.47 miles long, a measurement shows that they will exceed twelve miles; the board of supervisors refused to put the matter off calendar, and denied all protests; the proposed waterworks would overdraw the "Acton aquifiers" and they could not be replenished; the district was deliberately designed to take in the well of one riparian owner and leave his home out of the district, so he could not vote.

under the Civil Rights Act, and district court jurisdiction thereunder is lacking.

Mrs. Pierre calls attention to *Schroeder v. City of New York*, 371 U.S. 208, in which it was held that, under the circumstances of that case, the newspaper publications and posted notices did not measure up to the quality of notice which the Due Process Clause of the Fourteenth Amendment requires.

Schroeder, however, was not a case arising under the Civil Rights Acts. Proceeding in the state courts of New York, the plaintiff sued the city for damages for taking his water right, asserting that he was not accorded notice sufficient to constitute due process of law under the Fourteenth Amendment. He lost in the state courts and took an appeal to the United States Supreme Court from the Court of Appeals of New York.

Mrs. Pierre could have followed such a course here, and perhaps can still do so.[13] But she cannot make a Civil Rights case out of her challenge to the validity of the formation and financing of a water district, merely because some of her grounds for such a challenge are based on the federal Constitution.

A third provision of the Civil Rights Act relied upon by Mrs. Pierre, *i.e.*, Rev. Stat. § 722 (42 U.S.C. § 1988), pertains not to subject-matter jurisdiction, but to the forms of process and the scope of remedy. See *Schatte v. International Alliance of Theatrical Stage Employees &*

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[13]For example, see *Tarpey v. McClure*, 190 Cal. 593, 213 Pac. 983.

Moving Picture Operators, S.D. Cal., 70 F.Supp. 1008, 1010, aff'd 165 F.2d 216. Cf. *Pritchard v. Smith*, 8 Cir., 289 F.2d 153, 157.

Mrs. Pierre also relies upon 28 U.S.C. § 1331 as a source of subject-matter jurisdiction. This section provides that district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of ten thousand dollars, exclusive of interest and costs, ". . . and arises under the Constitution, laws, or treaties of the United States."

There are general allegations in the complaint to the effect that Mrs. Pierre's property, and that of others whom she undertakes to represent, is being taken without due process of law. But other allegations of the complaint make it plain that, up to the time this suit was instituted, neither District No. 37, nor anyone acting in its behalf, had taken or threatened to take any private property.[14]

All other constitutional questions sought to be raised are incidental to the purpose of setting aside the formation of the water district, this constituting the gist of the action. So understood, the case cannot be said to "arise" under the Constitution of the United States. The fact that it may be necessary in the course of the litigation to construe or apply provisions of the Constitution is not sufficient to

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[14]We need not decide whether Mrs. Pierre could have predicated jurisdiction under section 1331 upon effective allegations to the effect that private property was being taken without due process of law. But see *Mosher v. Phoenix*, 287 U.S. 29.

give application to 28 U.S.C. § 1331. See *Walker v. Bank of America*, 9 Cir., 268 F.2d 16, 23.[15]

The only other source of subject-matter jurisdiction relied upon by Mrs. Pierre, is the Declaratory Judgment Act, 28 U.S.C., §§ 2201-2202. But this Act is not intended to confer jurisdiction where none exists. *Stafford v. Superior Court*, 9 Cir., 272 F.2d 407, 409.

The judgment is affirmed.

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[15]It is also doubtful, on these pleadings, whether there is any dispute between the parties as to the meaning of any provision of the Constitution or law of the United States, this being essential to federal-question jurisdiction. See *Beistline v. City of San Diego*, 9 Cir., 256 F.2d 421, 425; *Marshall v. Desert Properties Co.*, 9 Cir., 103 F.2d 551, 552.

OFFICE OF THE CLERK
U. S. COURT OF APPEALS
P. O. BOX 547
SAN FRANCISCO 1, CALIF.

August 5, 1964

Helene P. Pierre
Attorney at Law
5076 Hermosa Ave.
Los Angeles, Calif.

Dear Sir:

The Petition for a Rehearing heretofore filed in case No. 19012 — PIERRE, etc. v. JORDAN, et al was this day denied.

Pursuant to Rule 26, and unless stayed by the order of the Court, a certified copy of the judgment of this Court under said Rule will be due to issue on the expiration of five (5) days from the date hereof.

Time for certiorari petition: Civil cases, 90 days; Criminal cases, 30 days.

Sincerely,

FRANK H. SCHMID,
Clerk.

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IN THE

Supreme Court of the United States

October Term, 1964

No. 641

HELENE P. PIERRE, etc.,
Petitioner,

vs.

FRANK M. JORDAN, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION

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WESTERN PRINTING COMPANY, WHITTIER—ORROW 8-1722

INDEX

Page

Opinions Below and Jurisdiction 1

Questions Presented 1

Statutes Involved 2

Statement 3

Argument 4

I. There is No Important Question of Federal Law Relating to Notice Because (1) Petitioner and Other Landowners Received Adequate Notice by Mail of the Board of Supervisors Meeting at Which Petitioner Appeared and Argued, and (2) the California Statutes Have Been Amended to Permit Notice by Mail in the Formation of Districts in Question 4

II. There is No Conflict of Decision 6

Conclusion 7

Appendix ..... App. 1

Statutes ..... App. 1

California Water Code Sec. 55103 ..... App. 1

California Water Code Sec. 55180 ..... App. 1

California Water Code Sec. 55187 ..... App. 1

California Government Code Sec. 6066 ..... App. 3

CITATIONS

Cases

	Page
Allegheny County v. Frank Mashuda Company, 360 U.S. 185	6
Firestone Tire and Rubber Company v. Board of Supervisors, 166 Cal. App. 2d 519; 361 U.S. 9; 4 L. Ed. 2d 49; 361 U.S. 941; 4 L. Ed. 2d 360	5
Memphis & C. R. Co. v. Pace, 282 U.S. 241, 246; 75 L. Ed. 315, 321	6
Queenside Hills Realty Company v. Saxl, 328 U.S. 80, 84-85	5
Schroeder v. City of New York, 371 U.S. 208	5, 6

Statutes

	Page
California Elections Code	
Section 10012	3, 4
California Government Code	
Section 6066	2, 3
California Water Code	
Section 55103	2
Section 55133	3
Section 55180	2
Section 55184	3
Section 55187	2

IN THE

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No. 641

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Petitioner,

vs.

FRANK M. JORDAN, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW and JURISDICTION

The opinions below and jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

1. Does the federal district court have jurisdiction to entertain a suit the basic and primary purpose of which is to set aside the formation of a water district organized under California law?[1]

[1]For the argument to support the negative answer thereto, we rely wholly upon the decision of the Court of Appeals for the Ninth Circuit (App. to Pet., pp. 10-24).

2. Was adequate notice of the Board of Supervisors meeting re formation of the water district, which meets the requirements of the Due Process Clause of the Fourteenth Amendment to the Federal Constitution, given to petitioner and those she purports to represent (a) where individual notice was mailed to each person concerned and (b) where petitioner appeared at the meeting and presented her arguments, oral and written [and (c) where, as to importance of the question, it should be further noted that the state Water Code has since been amended to require such notice]?

STATUTES INVOLVED

The federal constitutional and statutory provisions involved are set forth in the appendix to the petition (pp. 1-5).

Sections 55103 and 55180 of the California Water Code and Section 6066 of the California Government Code are set forth in the appendix to this brief. These are summarized by the Court of Appeals (App. to Pet., pp. 16-18).

Section 55187 of the California Water Code, newly enacted and effective June 29, 1963, is also set forth in the appendix hereto.

STATEMENT

A petition for the formation of a county waterworks district under Division 16 of the Water Code of California was presented to the Board of Supervisors of the County of Los Angeles (R. 9-10, 117-121). Notice of the hearing on the petition was published twice in a newspaper of general circulation in accordance with the requirements of Section 55133 of the Water Code and Section 6066 of the Government Code of the State of California. At the hearing, the board of supervisors continued the matter from April 18, 1963, to May 23, 1963, and directed that individual notice of the continued hearing be mailed to all affected landowners (R. 16. Exhibit A to notice and motion of defendant county officials beginning on R. 115). The clerk of the board mailed the notices (R. 16). The petitioner appeared at the hearing on May 23, 1963, filed a 35-page written protest and was heard by the board (R. 33-34).

At the May 23, 1963, hearing, the board denied all protests; on May 28, the board adopted a resolution that the question of the formation of the district and the issuance of bonds be submitted to the registered voters of the proposed district (R. 34; California Water Code Section 55184). Notice of the election was mailed to all registered voters in the proposed district (Exhibit B. to notice and motion of defendant county officials beginning on R. 115; California Elections

Code Section 10012). The petitioner did not receive notice of the election because she was not a registered voter (R. 51; Exhibit B to notice and motion of defendant county officials beginning on R. 115).

ARGUMENT

I.

THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW RELATING TO NOTICE BECAUSE (1) PETITIONER AND OTHER LANDOWNERS RECEIVED ADEQUATE NOTICE BY MAIL OF THE BOARD OF SUPERVISORS MEETING AT WHICH PETITIONER APPEARED AND ARGUED, AND (2) THE CALIFORNIA STATUTES HAVE BEEN AMENDED TO PERMIT NOTICE BY MAIL IN THE FORMATION OF DISTRICTS IN QUESTION.

The petitioner argues that the statutes of California do not require constitutional notice of the formation of a local county waterworks district. In reason I (Petition, p. 12), she makes reference to the footnotes on page 8 of the petition. Footnote 2c is a partial quotation from respondents' Opposition to Plaintiffs Motion to Convene a Three-judge Court (R. 169). The full quotation is:

> "The notice given to all property owners of the hearing on the petition for formation of a waterworks district was admittedly not required [by statute] on May 23, 1963, the date of the hearing. However, Assembly Bill 2761 of the 1963 Cali-

> fornia Legislature was in the process of being enacted. It went to the governor on June 18 and was signed into law on June 29. It authorizes the giving of notice exactly as was done in this case. A copy of the bill is attached. The reason for the bill is stated obliquely to be the decision in *Schroeder v. City of New York,* 371 U.S. 208. The court in *Schroeder* said that the condemning agency had a constitutional obligation which could have been satisfied by the 'mailing of a single letter' (page 214) even though there was no statutory direction that such be done. It is submitted that the defendant county officials and employees have complied exactly with the due process requirements enunciated by the *Schroeder* case."

Respondents do not concede by this argument that the *Schroeder* decision is applicable here.

Since the petitioner received individual notice of the hearing on the petition, there is no controversy on this subject; the constitutionality of the notice cannot be decided upon hypothetical facts. *Queenside Hills Realty Company v. Saxl,* 328 U.S. 80, 84-85.

Other footnotes are quotations from cases cited by the respondents. Footnote 2b quotes *Firestone Tire and Rubber Company v. Board of Supervisors,* 166 Cal. App. 2d 519; certiorari denied, 361 U.S. 9; 4 L. Ed. 2d 49, rehearing denied; 361 U.S. 941; 4 L. Ed. 2d 360. That case held that lack of notice of annexation of territory to a local fire protection district was not

a constitutional requirement. Similarly, this matter only involves the creation of a municipal corporation with limited powers to perform the governmental function of providing water to a particular locality.

II.

THERE IS NO CONFLICT OF DECISION

The petitioner states that the circuit court decision is in conflict with the cases of *Allegheny County v. Frank Mashuda Company,* 360 U.S. 185, and *Schroeder v. City of New York,* 371 U.S. 208, 9 L. Ed. 2d 255. Both decisions are distinct from this case.

The *Allegheny* case decided that there were no exceptional circumstances justifying the district court's abstention from taking jurisdiction when diversity jurisdiction was properly invoked. In the *Schroeder* case, the plaintiff brought an equitable action to set aside the condemnation of her water right after her claim for damages had been barred by the statute of limitations. Here, private property has not been condemned or threatened to be condemned; there is only a local water improvement district, the property of which is subject to an ad valorem tax. Similar tax provisions were upheld in *Memphis & C.R. Co. v. Pace,* 282 U.S. 241, 246; 75 L. Ed. 315, 321.

CONCLUSION

The petitioner has succeeded in delaying the functioning of the county waterworks district; no bonds have been sold nor will they be sold until this litigation has finished. The creation of the district was done constitutionally and the order of the district court dismissing this case was correct. For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

THOMAS C. LYNCH,
Attorney General of the
State of California

BURTON J. GINDLER,

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APPENDIX

Statutes

California Water Code, section 55103. The petition shall be presented at a regular meeting of the board of supervisors and shall be signed by not less than 25 percent of the freeholders resident within the proposed district, or by not less than 25 percent of the freeholders resident and nonresident within the proposed district, including not less than 15 percent of such resident freeholders.

California Water Code, section 55180. Unless the board of supervisors proceeds pursuant to Section 55161, the board of supervisors shall, by ordinance or resolution adopted at a regular or special meeting after having acquired jurisdiction to proceed in the formation of a district, provide for and order the holding of a special election in the proposed district to submit to the qualified voters thereof the proposition of forming the district and incurring a debt by the issuance of bonds of the district for the purposes set forth in the petition for the formation of the district, if a bonded indebtedness is to be incurred.

California Water Code, section 55187. All acts and proceedings heretofore taken by or on behalf of a county waterworks district for the formation of a dis-

trict or for the annexation to an existing district and for the authorization, issuance, sale, or exchange of bonds of the district or for the annexed territory may be confirmed, validated, and declared legally effective in the manner provided in this section.

The board may instruct the clerk of the board to mail a notice to all owners of property within the county waterworks district, as their names and addresses appear on the last equalized county assessment roll, or as known to the clerk. Such notice shall include the name of the district, the date the district was ordered formed or the date of the annexation to an existing district, the amount of bonds authorized, and a statement that, commencing with the date of mailing of said notice there shall be a 60-calendar-day period during which period any property owner may file an action contesting the validity of the district's formation, the annexation to an existing district or the bond authorization. The clerk shall make and file with the board a certificate of mailing of the notices. The board may order the clerk to include such other additional information that it deems pertinent.

If no action is filed during the 60-day period, the district's formation or the annexation to an existing district and the bond authorization and valid and uncontestable.

California Government Code, section 6066. Publication of notice pursuant to this section shall be once a week for two successive weeks. Two publications in a newspaper published once a week or oftener, with at least five days intervening between the respective publication dates not counting such publication dates, are sufficient. The period of notice commences upon the first day of publication and terminates at the end of the fourteenth day, including therein the first day.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 641

HELENE P. PIERRE as a citizen of the United States and of the State of California on her own behalf and on behalf of all other citizens, electors and voters, and riparian property owners and taxpayers of the State of California situated and located in the Proposed Los Angeles County Waterworks District #37 — Acton, California,

Petitioners,

vs.

FRANK M. JORDAN, in his official capacity as Secretary of State of California; EDMUND G. BROWN, in his official capacity as Governor of the State of California; BENJAMIN S. HITE, in his official capacity as Registrar of Voters of the County of Los Angeles, State of California; STANLEY MOSK, in his official capacity as Attorney General of the State of California; WARREN M. DORN, Chairman of the Board of Supervisors of Los Angeles County; FRANK G. BONELLI, Member of Board of Supervisors of Los Angeles County; KENNETH HAHN, Member of Board of Supervisors of Los Angeles County; ERNEST E. DEBS, Member of Board of Supervisors of Los Angeles County; BURTON W. CHACE, Member of Board of Supervisors of Los Angeles County; GORDON T. NESVIG, Clerk of Board of Supervisors of Los Angeles County; JOHN A. LAMBIE, Los Angeles County Engineer; JAMES T. ROSTRON, Division Engineer of Los Angeles County Waterworks & Utilities; KENNETH R. PUTNAM, Supervising Civil Engineer, Division Los Angeles County Waterworks & Utilities; PHILIP E. WATSON, Tax Assessor of the County of Los Angeles; and HAROLD J. OSTLY, Tax Collector of the County of Los Angeles,

Respondents.

PETITION FOR REHEARING ON ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

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PETITION FOR REHEARING ON ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Helene P. Pierre, on her own behalf and on behalf of all the other petitioners in this class action, moves for leave to file this Petition for Rehearing of the order of this Court denying the petition for writ of certiorari in this case, entered on January 18, 1965.

Petitioners pray that this Court grant rehearing of its order of January 18, 1965, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Ninth Circuit in the above-entitled case as prayed for in the petition filed October 29, 1964.

Reasons for Granting Rehearing and Issuing The Writ

Intervening circumstances of substantial and controlling effect have taken place since the filing of Petitioners' Petition for Writ of Certiorari. Private property has been taken without due process of law.

Jurisdiction

Jurisdiction is founded, in addition to the Constitutional provisions of the Fourth and Fourteenth Amendments, upon *28 U.S.C. 1331,* and upon the Civil Rights Acts. (Petition, page 5).

Issue Decided

The complaint does not state a cause of action cognizable by federal district court under Civil Rights Acts.

Issue Here Presented

The complaint does state a cause of action founded on *28 U.S.C. Sec. 1331.* The jurisdictional defect raised

by the United States Court of Appeals on this statute has now been cured. Private property has [now] been taken.

The decision of the United States Court of Appeals for the Ninth Circuit (Petition — Appendix, page 23) held:

1. That the complaint states effective allegations to the effect that private property was being taken without due process of law. *(28 U.S.C. 1331.)*
2. That up to the time this suit was instituted it was plain that neither District No. 37, nor anyone acting in its behalf, had taken or threatened to take any private property.
3. Therefore, that that court did not [then] (June 9, 1964) need to decide the issue of jurisdiction predicated under *28 U.S.C. Sec. 1331.*

Since that decision was rendered and subsequent to the filing of Petitioners' Petition for Writ of Certiorari on October 29, 1964, petitioners have been deprived of private property without due process of law.

On December 10, 1964 petitioners were deprived of private property consisting of money for a special tax assessment at the rate of 26.18% of their total tax bills.

Petitioners were denied some or all of their fundamental rights under the due process and the equal protection clauses of the Fourteenth Amendment. These included the denial of (1) right to notice, (2) right to be heard, and (3) by gerrymandering even their right to vote on this matter which affected their fundamental rights.

In its decision the Court of Appeals takes judicial notice of these effective allegations of deprivations of petitioners' constitutional rights; but then it erroneously concluded that petitioners' *purpose* of the suit was not for the redress of the deprivations of their constitutional rights. The Court then held that since no private property had [then] been taken that it lacked jurisdiction.

Reason I, Petition page 12, sets forth important fundamental federal questions involving the constitutional rights of all persons everywhere who own riparian property in the State of California. The points made upon the construction of these statutes have not yet been but should be settled by this Court.

Through the application of these state statutes, not only were petitioners deprived of their fundamental constitutional rights; and have been deprived of their private property, but they were even denied their right to vote on the matter by the use of gerrymandering. In a recent decision involving voting, this Court held:

> "One's right to life, liberty, and *property* and *other fundamental rights* may not [even] be submitted to vote; . . . ."

Lucas, et al., v. Forty-Fourth General Assembly of the State of Colorado, et al., (June 15, 1964) 84 S. Ct. 1472.

There is no provision barring a federal court from assuming jurisdiction to inquire into alleged deprivation of federal constitutional rights. *Baker v. Carr,* (1962) 369 U.S. 186.

Petitioners have standing to attack the constitutionality of a state statute, the enforcement of which has taken their private property, whether under the guise of taxation, condemnation, or eminent domain, when the taking of such property has been done in violation of the constitutional guarantees of the Fourteenth Amendment. *Schroeder v. City of New York,* (1962) 371 U.S. 208.

Conclusion

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

HELENE P. PIERRE
Petitioners - Pro Se.

Certificate of Good Faith

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

HELENE P. PIERRE
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